Supreme Court, U. S.
FILED
JUN 9 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1979

No. 79-1056

NORTHWEST AIRLINES, INC.,

Petitioner,

-against-

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO

-and-

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents,

SUPPLEMENTAL BRIEF OF RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

STEPHEN B. MOLDOF
Of Counsel:

Keith E. Secular
Jay Levy-Warren

COHEN, WEISS and SIMON
605 Third Avenue
New York New York 10016
Telephone: (212) 682-6077

Attorneys for Respondent
Air Line Pilots Association,
International

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1979

No. 79-1056

NORTHWEST AIRLINES, INC.,

Petitioner,

v.

TRANSPORT WORKERS UNION OF AMERICA, AFL-CIO,

and

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL,

Respondents.

SUPPLEMENTAL BRIEF OF RESPONDENT AIR LINE PILOTS ASSOCIATION, INTERNATIONAL IN OPPOSITION

Respondent Air Line Pilots Association, International, submits this supplemental brief in response to the brief submitted by the Solicitor General as amicus curiae.

We agree with the Solicitor General that certiorari should not be granted in this case, and that consideration of Petitioner's claim for contribution for liability under Title VII is premature since the lower Courts have not ruled on the pertinent issues. However, we disagree with the Solicitor General's suggestion that the Petition herein with regard to the issue of Equal Pay Act contribution be held in abeyance pending this Court's decision in Westvaco Corp. v. Adams Extract Co., No. 79-972, an antitrust case, in the event certiorari is granted in Westvaco.

There is a critical, overriding distinction between the state of the law on antitrust contribution and Equal Pay Act contribution which is highly pertinent to consideration of the appropriateness of

review at this time by the Court. As the Solicitor General points out in its brief in Westvaco, there is a split in the Circuits on whether a right to contribution exists, under any circumstances, for antitrust liability. In contrast, there is no split in the Circuits on whether a right to contribution exists for Equal Pay Act liability. Every court to consider the question has ruled that an employer may not seek contribution or indemnity from labor unions for liability arising under the Equal Pay Act (Pet. App.D., p.11d; see also Brief in Opposition to Petition, pp. 6-12). The Solicitor General cites no contrary authority. Thus, the uncertainty and the possible danger of forum-shopping which may exist under the antitrust laws because of inconsistent judicial rulings (Solicitor General's Brief in Westvaco,

pp. 15-16) is not present here. The lower Courts have provided clear and consistent guidance on the issue of Equal Pay Act contribution.

Whether or not the Equal Employment Opportunity Commission has yet formulated a position on whether an injured employee may sue a union directly under the Equal Pay Act (Brief of Solicitor General, p. 6), there is no question that the Department of Labor, which administered the statute from its inception, consistently took a position against recognition of a right of employer contribution and against a private right of action against unions. See Brief in Opposition to Petition, p. 11 footnote. Northwest is thus asking the Court to review a ruling with which no Court or federal agency has disagreed.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in our prior Brief in Opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

STEPHEN B. MOLDOF

Of Counsel:

Keith E. Secular
Jay Levy-Warren

COHEN, WEISS and SIMON
Attorneys for Respondent
Air Line Pilots
Association, International